Petition

83-677

No. .....

IN THE

Supreme Court of The United States

OCTOBER TERM 1983

THE SUPERIOR OIL COMPANY, PETITIONER

v.

PIONEER CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

DAN A. SPENCER
PATRICK F. TIMMONS, SR.
THE SUPERIOR OIL COMPANY
Post Office Box 1521
Houston, Texas 77001
Attorneys for Petitioner

QUESTIONS PRESENTED

1. Whether an action on a contract arises under federal law where the parties' rights under the contract depend entirely on the construction of a federal statute regulating the subject matter of the contract.

2. Whether federal district courts have jurisdiction to hear an action for a declaratory judgment of the rights of parties under a contract where such declaration requires and depends entirely on the construction of a federal statute and the rights of the parties under said statute.

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THE SUPERIOR OIL COMPANY[1], Petitioner

v.

Pioneer Corporation

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Superior Oil Company ("Superior"), through undersigned counsel, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, infra) is reported at 706 F.2d 603. The opinion of the district court (App. C, infra) is reported at 532 F.Supp. 731.

JURISDICTION

The judgment of the court of appeals (App. B, infra) was entered on June 6, 1983. A petition for rehearing was denied per curiam on July 25, 1983 (App. E, infra). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The statutes involved are set forth in Appendix G. They are:

15 U.S.C. § 3301 (1982) (being Section 2 of the Natural Gas Policy Act of 1978, "NGPA").

15 U.S.C. § 3315 (1982) (being Section 105 of the NGPA).

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[1] Apart from petitioner's wholly owned subsidiaries, petitioner is a corporation which owns a 46.3% interest in Falconbridge Limited and a 24.0% interest in Western Platinum Limited. Petitioner does

15 U.S.C. § 3414(c) (1982)

28 U.S.C. § 1331 (Supp. IV 1980)

28 U.S.C. § 1337 (Supp. IV 1980)

28 U.S.C. § 2201, 2202 (Supp. III 1979)

STATEMENT OF THE CASE

This action was filed by The Superior Oil Company on August 28, 1980, in the United States District Court for the Northern District of Texas, Dallas Division. By this action Superior sought to establish that a gas sales agreement ("Agreement") with defendant Pioneer Corporation constituted an existing contract under the NGPA. As the predicate for the recovery of the amount of damages claimed by Superior in its cause of action, Superior alleged that the Agreement, as extended by Pioneer's exercise of an option to extend, is an "existing contract" as defined in the Natural Gas Policy Act of 1978 ("NGPA"), 15 U.S.C. § 3301, and that the price to which it is entitled for gas delivered to Pioneer pursuant to the extended Agreement is the ceiling price established for gas sold under "existing contracts" by Section 105 of the NGPA (15 U.S.C. § 3315). Federal question jurisdiction was asserted under 28 U.S.C. § 1331 because of the need for an interpretation of federal law. Superior prayed for a declaration that the Agreement as extended was an "existing contract" under the terms of the NGPA and that Pioneer was bound by its extension; Superior also prayed for damages for Pioneer's failure to pay said price.

Following the filing of Pioneer's answer, Superior filed a motion for partial summary judgment seeking a determination that Pioneer had exercised its option to extend the primary term of the Agreement, and that the Agreement, as so extended, was an "existing contract" under the terms of the NGPA. Pioneer then filed a motion for partial summary judgment conceding that it had exercised its option to extend the primary term of the Agreement, and seeking a determination that the Agreement, as

so extended, was a "rollover contract" under the terms of the NGPA. The sole issue presented by the conflicting motions for summary judgment was the interpretation of Section 105 of the NGPA.

Subsequent to the District Court's entry of an opinion rendering partial summary judgment for Pioneer (App. C, infra), the parties entered into an agreed stipulation as to such matters as were necessary for the entry of a final and appealable judgment (App. F infra). The District Court entered a final judgment herein on August 9, 1982, (App. D, infra).

Superior appealed the District Court judgment to the Court of Appeals for the Fifth Circuit. The Court of Appeals raised the question of subject-matter jurisdiction for the first time on its own motion, vacated the judgment below and dismissed the case for want of jurisdiction on June 6, 1983 (App. B infra). The basis for the Court of Appeals' decision was that the source of Superior's right to recover was state contract law and that Superior's allegation regarding the classification of the contract under the NGPA was in anticipation of a defense. A petition for rehearing was denied per curiam on July 25, 1983 (App. E, infra).

REASONS FOR GRANTING THE PETITION

1. Conflict With Other Appellate Decisions.

A conflict exists among the circuits regarding the existence of federal question jurisdiction under 28 U.S.C. § 1331 in suits based partly on state law which seek the construction or interpretation of the Constitution or laws of the United States. In its decision below, the Fifth Circuit held, inter alia, that a federal question was not present because Superior's "right to recover" was grounded in state contract law. Contradictorily, the court noted that "the dispute between Superior and Pioneer pivots on an issue of federal law." (Opinion of Court of Appeals, App. A, p. A-8).

Other courts have held that where an issue of federal law is "pivotal", federal question jurisdiction exists. The statute which delineates federal question jurisdiction does so with the following language: "The district courts shall have original jurisdiction of all civil actions arising under the constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Chief Justice Marshall said in *Cohens* v. *Virginia*, 6 Wheat. 264, 378, 19 U.S. 264, 378 (1821), "A case in law or in equity. . . . may truly be said to *arise under* the constitution or a law of the United States whenever its correct decision *depends on the construction of either*." (Emphasis supplied). Several circuits have found federal question jurisdiction in suits in which the claim of right involved would succeed or fail because of an interpretation or construction of federal law.

The Second Circuit, in *Ivy Broadcasting Co.* v. *American Tel. & Tel. Co.*, 391 F.2d 486 (2d Cir. 1968), held that a case "arises under" federal law if the complaint discloses a need for the interpretation of an act of Congress or if the dispositive issues stated require the application of federal common law. The court was there considering an action by a user of interstate telephone service against telephone companies for negligence and breach of contract in rendition of telephone services. There was no diversity of citizenship between the parties. Even though it determined that no federal act created a remedy for negligence or breach of contract regarding interstate telephone service, the court stated that the fact that Congress had occupied the field of regulation of interstate service by communications carriers to the exclusion of state law indicated that questions concerning the duties, charges and liabilities of telegraph or telephone companies with respect to interstate communications service are to be governed by federal law. As such, the court found jurisdiction under 28 U.S.C. § 1331 to consider the application of federal common law to the dispositive issues in the case.

In *Mountain Fuel Supply Co.* v. *Johnson*, 586 F.2d 1375 (10th Cir. 1978), the Tenth Circuit also found federal question jurisdiction over an action based partly on state contract law. Mountain Fuel Supply Co. had brought suit in state court against a purchaser of crude oil alleging that it was entitled to recover crude oil ceiling prices which were higher than the prices provided for in its contract with the purchaser. The ceiling prices that Mountain Fuel sought to recover had been established by the Cost of Living Council of the United States pursuant to the Economic Stabilization Act of 1970. The buyer removed the case to federal court where Mountain Fuel's claim was disposed of by stipulation and the case was tried on the buyer's counterclaim. From a district court judgment for the purchaser, Mountain Fuel appealed to the Tenth Circuit.

As a threshold issue it was necessary for the court to determine whether the case had been properly removed from the state court. There was no diversity of citizenship between the parties. The court held that federal question jurisdiction was present because Mountain Fuel's remedial prayer was "anchored to an interpretation and applicability of federal laws and regulations governing the price or prices it may legally charge [the purchaser]. . . ." 586 F.2d at 1382. It is difficult if not impossible to distinguish *Mountain Fuel* from the case at bar.

The Seventh Circuit found a suit on a note to "arise under" federal law in *Goldman* v. *First Federal Sav. & L. Ass'n. of Wilmette*, 518 F.2d 1247 (7th Cir. 1975). Plaintiffs had borrowed money to purchase a home from the defendant, a savings and loan association regulated by the Federal Home Loan Bank Board. The promissory note, which was secured by a mortgage on the home, provided for repayment in monthly installments. Each installment was to be applied first to interest and then to principal.

After making a monthly installment payment, plaintiffs elected to pay the balance of the note. Plaintiffs claimed a portion of their last monthly installment demanded by defendant represented interest for a period after the note was paid in full and sought a refund of same, which request was refused.

Plaintiffs subsequently brought a class action suit against defendant to complain of defendant's practice of retaining prepaid interest as a violation of a regulation of the Federal Home Loan Bank Board forbidding prepayment penalties by federal associations unless expressly provided for in the contract. Plaintiffs also claimed that defendant's retention of the prepaid interest was a breach of the parties' contract under state law.

Defendant moved to dismiss the complaint on the grounds, (1) that the ultimate resolution of the controversy depended on an interpretation of the note as a matter of state law and, (2) that no prepayment penalty was involved and therefore no violation of the federal regulations had been alleged. The district court denied defendant's motion and found for plaintiffs on the merits. On appeal, the Seventh Circuit affirmed the district court's finding of jurisdiction with the following statement:

> . . . [E]ven if defendant correctly construed its note as a matter of state law, the complaint nevertheless requires decision of the question whether the retention of unearned interest is a prepayment penalty within the meaning of the federal regulation. The right which plaintiff asserts . . . will be supported if the regulation is given one construction and defeated if it receives another.

518 F.2d at 1251 (citation omitted).[2]

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[2] (In *Goldman*, the Seventh Circuit was considering federal jurisdiction under 28 U.S.C. § 1337 (App. G, p. G-13). It has been held that the term "arises under" has the same meaning in Section 1337 as in Section 1331. *Maritime Service Corp.* v. *Sweet Brokerage de Puerto Rico, Inc.*, 537 F.2d 560 (1st Cir. 1976).)

Other federal courts have directly held that the presence of a federal question for jurisdictional purposes depends on the need for construction of the United States Constitution or a federal law for deciding a dispositive issue. E.g., *Littell* v. *Nakai*, 344 F.2d 486 (9th Cir. 1965); *Hines* v. *Cenla Community Action Committee*, 474 F.2d 1052 (5th Cir. 1973); *City of Palo Alto* v. *City and Cty. of San Francisco*, 548 F.2d 1374 (9th Cir. 1977).

In the instant case, the Fifth Circuit conceded that the dispute between the parties regarding the price of gas under the subject Agreement, the resolution of which dispute would end all controversy between the parties, "pivots" on an issue of federal law. Yet, the court dismissed the case for want of jurisdiction. Though the case may be said to be based partly on state law in that it is a suit involving a contract, the determination of the dispositive issue in the case involves not an inquiry into state contract law but solely an interpretation of the NGPA. The Fifth Circuit leaves the parties with no alternative but to seek a state court's determination of an issue of federal law in a suit involving state law only in a secondary way. Under the authority cited herein, such a case belongs in federal court.

Further support for jurisdiction of the federal courts over this matter is the existence of criminal penalties for violation of the NGPA. 15 U.S.C. § 3414(c) (App. G, p. G-11). Neither plaintiff nor defendant wish to violate the NGPA and both continue to need a determination of their criminal liability or nonliability in the performance of the contract. Under the federal Declaratory Judgment Act, a party may seek a construction of a statute in order to avoid liability thereunder. In the Senate Report regarding the reasons for passing the Declaratory Judgment Act, it was stated that one of the principal purposes for adding the declaratory procedure was to enable parties to avoid incurring criminal liability. The report quoted this Court's remarks regarding the rights of persons to obtain a declaration in equity:

> They are not obliged to take the risk of prosecution, fines and imprisonment and loss of property in order to secure an adjudication of their rights.

Senate Report No. 1005, 73d Congress, 2d Session, May 14, 1934, p. 6, citing *Terrace* v. *Thompson*, 263 U.S. 197, 216 (1923). This Court has held, as well, that a declaration of non-liability can constitute a "right." *Aetna Life Ins. Co. of Hartford, Conn.* v. *Haworth*, 300 U.S. 227 (1937). As such a declaration of non-liability under the NGPA meets the requirement for federal jurisdiction given by this Court in *Gully* v. *First Nat. Bank in Meridian*, 299 U.S. 109, 112 (1936), "The right or immunity must be such that it will be supported if the Constitution or laws of the United States are given one construction or effect, and defeated if they receive another." (Citation omitted).

The foregoing cases reveal severe dissension among the appellate courts regarding the breadth of federal question jurisdiction where determinative issues depend on construction of federal law. The decision of the Fifth Circuit is in direct contravention of the cited decisions of the Second, Seventh and Tenth Circuits. The issue is, thus, one of national importance in urgent need of resolution.

2. **Jurisdiction Under the Declaratory Judgment Act.**

Although petitioner contends that federal question jurisdiction is presented by the coercive prayer of the complaint, the prayer for a declaration of its rights provides an independent, if separate, basis for jurisdiction. This case presents important issues regarding federal question jurisdiction under 28 U.S.C. § 1331 in relation to the federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202 and an issue regarding construction of the NGPA. The nature of a declaratory judgment action and the policy behind the passage of the federal Declaratory Judgment Act create a continuing conflict in the application of traditional jurisdictional rules to this non-traditional type of action. This

conflict warrants judicial clarification in the interest of uniformity of procedure among the federal courts.

The main purpose of the Declaratory Judgment Act was to enable parties in dispute over their rights to sue for a declaration of rights without resort to coercive action. In its report which accompanied the Act in Congress, the House Judiciary Committee described the procedure thusly,

> The 'declaratory judgment' is a useful procedure in determining jural rights, obligations and privileges, but may be applied to the ascertainment of almost any determinative fact or law. The declaration of a status was perhaps the earliest exercise of this procedure, such as the legality of marriage, the construction of written instruments and the validity of statutes. It is intended to save tedious and costly litigation by ascertaining at the outset the controlling fact or law involved, thus either concluding the litigation or thereafter confining it within more precise limitations.

House Report No. 1264, 73d Congress, 2d Session, April 17, 1934, p. 2.

The Senate Judiciary Committee noted as well that the declaratory judgment action made available by the federal act was most beneficial when used prior to the disruption of the legal relationship sought to be construed:

> So now it is often necessary to break a contract or a lease, or act upon one's own interpretation of his rights when disputed, in order to present a justifiable controversy. In jurisdictions having the declaratory judgment procedure, it is not necessary to bring about such social and economic waste and destruction in order to obtain a determination of one's rights.

Senate Report No. 1005 *supra* at p. 3.

Because it enabled parties to sue prior to an actual violation of contested rights, the Declaratory Judgment Act allowed suits in

federal court which could not have previously gained admittance. The Third Circuit noted this result was desirable stating, "The Act should have a liberal interpretation, bearing in mind its remedial character and the legislative purpose." *Dewey & Almy Chemical Co.* v. *American Anode, Inc.*, 137 F.2d 68 (3d Cir.) *cert. denied*, 320 U.S. 761 (1943).

Though this Court has stated that the Declaratory Judgment Act is "procedural only" and thus does not extend the jurisdiction of federal courts, *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U.S. 667, 671 (1950), the consideration by federal courts of cases which could not previously have been heard must be said to "extend" the jurisdiction of federal courts, if only in a limited sense. The House Judiciary Committee specifically stated, "It [the Declaratory Judgment Act] *extends* the judicial power for the rendition of what is known as 'declaratory judgments'. . . ." House Report No. 1264, *supra*, p. 1. (Emphasis supplied). Though the old rules regarding jurisdiction were retained, the addition of the declaratory judgment remedy power to the arsenal of the federal courts demands their re-clarification. These rules were based on a traditional adversary setting in which the request for declaratory judgment does not often appear.

At issue herein is federal question jurisdiction in conjunction with a plea for declaratory relief. The court below dismissed the action because it stated that Superior's allegation that the extension of its gas sales contract was an "existing contract" was in anticipation of a defense on the part of Pioneer that the NGPA does not permit charges over the maximum price under the original agreement as adjusted for inflation. The court was applying the rule that the anticipation of a federal defense does not permit invocation of federal question jurisdiction. *American Well Works Co.* v. *Layne & Bowler Co.*, 241 U.S. 257, 259 (1916); *Gully* v. *First Nat. Bank in Meridian, supra* at 113. This rule arose in the context of traditional adversary actions

and is conceptually inconsistent with declaratory judgment actions.

Adversarial restrictions have been relaxed in the exercise of other types of jurisdiction in federal courts to enable parties to obtain declaratory judgments who would not previously have been able to do so. Suits by alleged patent infringers for the declaration of the invalidity of a patent are heard even though in a normal action for patent infringement these parties would appear as defendants. The courts state that it is good policy to hear an alleged infringer's action for a declaration of the patent's invalidity rather than allowing a patentee to threaten an infringement suit and perhaps force settlement with a patentee whose infringement claim is absolutely unfounded. *Treemond Co.* v. *Schering Corp.*, 122 F.2d 702 (3d Cir. 1941); *Sinclair & Carroll Co.* v. *Interchemical Corp.*, 325 U.S. 327 (1945). The *Treemond* court noted the utility of the declaratory judgment in this type of action and made the following comment:

> Some District Courts seem to have found difficulty in freeing themselves from the strait-jacket of the "adversary" conception. They exhibit a tendency toward a narrow and technical interpretation of an Act [the Declaratory Judgment Act] intended to be construed in accordance with its broad and wise purpose.

122 F.2d at 703. (citations omitted)

At least two federal courts have recognized federal question jurisdiction where the party requesting declaratory judgment would have been barred by traditional "case or controversy" requirements. In *Zaconick* v. *City of Hollywood*, 85 F.Supp. 52 (S.D.Fla. 1949), the plaintiffs sought a declaration of the unconstitutionality of a state statute as applied to themselves prior to its enforcement against them. The district court denied defendant's motion to dismiss for lack of federal question jurisdiction with the following statement, "... [I]t is obvious that the suit is one which arises under the Federal Constitution...." 85

F.Supp. at 54. The court heard the case in spite of the fact that the party bringing suit would be the defendant in a traditional action. The Second Circuit, in *Rambusch Decorating Co.* v. *Brotherhood of Painters, Decorators and Paperhangers of America*, 105 F.2d 134 (2d Cir. 1939), allowed the plaintiff contractor to obtain a declaration of the illegality of its contract with the defendant Brotherhood under federal antitrust laws when it was in fact the defendant who had the coercive action for breach.

The *Zaconick* and *Rambusch* cases illustrate the willingness of these courts to free themselves from the "strait-jacket" of the adversary concept as applied to the requirement that the federal question not arise by way of defense. The restrictions placed on federal question jurisdiction regarding anticipation of a defense which arose in the context of traditional coercive actions lose their validity when applied in the context of a request for a declaration of rights under federal law — a non-traditional, non-coercive form of action. With respect to declaratory judgments, a federal district court noted soon after the federal act's passage, "A declaratory judgment should be granted when it will serve a useful purpose in clarifying and settling legal relations and will terminate and afford relief from insecurity, uncertainty and controversy." *Lehigh Coal & Navigation Co.* v. *Central R. of New Jersey*, 33 F.Supp. 362, 365 (E.D.Pa. 1940). This Court has said regarding traditional procedural restrictions, "The judiciary clause of the constitution . . . did not crystallize into changeless form the procedure of 1789 as the only possible means for presenting a case or controversy otherwise cognizable by the federal courts." *Nashville, C. & St. L. Ry.* v. *Wallace*, 288 U.S. 249 (1933). The policy behind the passage of the Declaratory Judgment Act would be best served by a redefinition of federal question jurisdiction where the request is for declaratory relief which would look to the merits of the federal issue presented

without regard to the manner of its presentation in the context of traditional adversary actions.

The case at bar is one which the supporters of the Declaratory Judgment Act envisioned as most appropriate for declaratory relief. The rights and obligations of the parties would be finally determined by a declaration of the construction of the NGPA. This determination would thus "save tedious and costly litigation by ascertaining at the outset the controlling fact or law involved. . . either concluding the litigation or thereafter confining it within more precise limitations." House Report No. 1264, *supra*, p.2. The policy which moved the courts in the patent cases and in *Zaconick* and *Rambusch* to hear the declaratory judgment actions regardless of which "side" initiated them should enable the Fifth Circuit to provide the necessary construction of the NGPA to terminate this now overextended litigation. The breadth of federal jurisdiction under the Declaratory Judgment Act is an issue of national importance and one on which the lower federal courts need the guidance of this Court.

CONCLUSION

For the reasons stated above, this Court's word is needed regarding the breadth of federal question jurisdiction in the district courts. Also, the decision of the Court of Appeals has raised a question of importance to the orderly administration of justice in the federal courts regarding the interrelationship between jurisdiction in those courts and the Declaratory Judgment Act.

Respectfully submitted,

THE SUPERIOR OIL COMPANY
DAN A. SPENCER
Assistant General Counsel

PATRICK F. TIMMONS, SR.
Senior Counsel

Attorneys for Petitioners

October 1983

APPENDIX A

706 F.2d 603

SUPERIOR OIL CO.,
Plaintiff-Appellant,

v.

PIONEER CORPORATION,
Defendant-Appellee.

No. 82-1464

UNITED STATES COURT OF APPEALS,
FIFTH CIRCUIT.

June 6, 1983.

Seller brought action against buyer to recover price of gas sold to buyer under pre-Natural Gas Policy Act agreement as extended by buyer's exercise of option. The United States District Court for the Northern District of Texas, William M. Taylor, Jr. J., 532 F.Supp. 731, granted partial summary judgment for buyer, and seller appealed. The Court of Appeals, Patrick E. Higginbotham, Circuit Judge, held that federal court was without subject-matter jurisdiction of action.

Vacated and dismissed.

1. Federal Courts [key] 192

Federal court was without subject-matter jurisdiction of seller's action to recover price of gas sold to buyer under pre-Natural Gas Policy Act agreement as extended by buyer's exercise of option, notwithstanding that NGPA price ceilings affected price that seller could charge for gas and notwithstanding seller's request for declaratory judgment that extension of agreement was "existing contract" rather than "rollover" within

meaning of Act. Natural Gas Policy Act of 1978, §§ 2(12), 106(b)(1), 15 U.S.C.A. §§ 3301(12), 3316(b)(1); Helium Act, § 2 et seg., as amended, 50 U.S.C.A. § 167 et seq.; 28 U.S.C.A. §§ 1331, 2201.

2. Gas [key] 14.1(3)

Natural Gas Policy Act price ceilings do not give producer a federal right to receive a particular price for its gas. Natural Gas Policy Act of 1978, §§ 2-602, 2(12, 13), 105(b), 106(b)(1), 15 U.S.C.A. §§ 3301-3432, 3301(12, 13), 3315(b), 3316(b)(1).

3. Federal Courts [key] 241

Anticipated defense may not be basis for federal-question jurisdiction. 28 U.S.C.A. § 1331.

4. Gas [key] 14.1(3)

Natural Gas Policy Act establishes no federal right to recover for intrastate natural gas. Natural Gas Policy Act of 1978, §§ 2-602, 2(12, 13), 105(b), 106(b)(1), 15 U.S.C.A. §§ 3301-3432, 3301(12, 13), 3315(b), 3316(b)(1).

5. Declaratory Judgment [key] 1

Action for declaratory relief may be used to obtain judgment that another party does not have federal right and, in such sense, declaratory-judgment remedy expands federal jurisdiction by enabling party to bring federal action corresponding to one that opposing party might have brought. 28 U.S.C.A. § 2201.

Appeal from the United States District Court for the Northern District of Texas.

Before CLARK, Chief Judge, JOHNSON and HIGGINBOTHAM, Circuit Judges.

PATRICK E. HIGGINBOTHAM, Circuit Judge:

In this appeal we are asked to decide whether the exercise of an option to extend the term of a gas sales agreement is a

"rollover contract" within the meaning of § 2(12) of the Natural Gas Policy Act, § 15 U.S.C. § 3301(12). Because we conclude that the district court was without subject-matter jurisdiction, we must decline the invitation. We vacate the judgment below and dismiss for want of jurisdiction.

On November 1, 1954, Superior Oil Co. and Pioneer Natural Gas Co., the predecessor of Pioneer Corp., contracted for the sale of natural gas. Pioneer agreed to buy from Superior its natural gas available at the outlet of a gas processing plant in the West Seminole Field, Gaines County, Texas. The duration of the agreement was as follows:

> This Agreement shall be effective as of November 1, 1954, and shall continue in effect for a term of twenty-five (25) years from and after such date, provided that the primary term may be extended at the option of Buyer for an additional period equivalent to the period gas is used for injection purposes in the West Seminole Field, or the period which is necessary to enable Buyer to receive the quantity of gas not made available to it because of such injection operations, whichever is the shorter.

Because the gas was not "dedicated" to interstate commerce, the sale was not then subject to federal regulation. In 1978 Congress adopted the Natural Gas Policy Act, 15 U.S.C. §§ 3301-3432, which regulated intrastate as well as interstate sales of natural gas. On October 17, 1979, after the passage of the Act, but before the expiration of the twenty-five-year term, Pioneer notified Superior that it was exercising its option to extend the term of the agreement.

On August 28, 1980, Superior filed this suit to recover the price of gas sold to Pioneer under the agreement as extended by the exercise of the option. Superior alleged that Pioneer had refused to pay for the gas delivered since November 1, 1979. It alleged that the extension was an "existing contract" within the meaning of § 2(13) of the NGPA, 15 U.S.C. § 3301(13), and that the ceiling price was the lower of the price under the

extended agreement and the maximum lawful price for "new" natural gas. *See* 15 U.S.C. § 3315(b). Alternatively, and only if its first contention were rejected, Superior alleged that the extension was a "rollover contract" as defined by § 2(12) of the NGPA, 15 U.S.C. § 3301(12), and that the ceiling price was the maximum price under the original agreement plus an inflation adjustment factor. *See* 15 U.S.C. § 3316(b)(1). Superior's complaint stated a single claim "for breach of contract" with jurisdiction predicated on 28 U.S.C. § 1331, the general federal-question juridiction statute. In its prayer for relief, Superior sought damages and injunctive and declaratory relief, including a declaration that the agreement as extended was an "existing contract" within the meaning of the NGPA.

Both parties moved for partial summary judgment, with Pioneer conceding that it had exercised the option but seeking a determination that the option so exercised was a "rollover contract." The district court granted Pioneer's motion. 532 F.Supp. 731 (N.D.Tex.1982). It then entered a final judgment on the basis of a fact stipulation between the parties. Superior has appealed, asking us to hold that the extension of the agreement by the exercise of the option is an "existing contract" rather than a "rollover contract."

At the outset we are confronted with the question of subject-matter jurisdiction. Although neither party has raised the issue either here or below, it is our duty to do so. Because both Superior and Pioneer are Texas corporations for purposes of diversity jurisdiction any jurisdiction must be under 28 U.S.C. § 1331.

There have been innumerable interpretations of § 1331's requirement that a case "arise[ ] under the Constitution, laws, or treaties of the United States." The general consensus among courts and commentators today seems to be that federal law must ordinarily provide a right that the plaintiff is asserting, and perhaps the plaintiff's claim. It is an old puzzlement that has drawn the attention of the notable jurists and scholars. Chief

Justice Marshall's formula, whether the federal question "forms an original ingredient" of the cause, *Osborn* v. *Bank of the United States*, 9 Wheat (22 U.S.) 738, 824, 6 L.Ed. 204 (1824), has been treated as a constitutional minimum. *See Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 471, 77 S.Ct. 912, 928, 1 L.Ed.2d 972 (1957) (Frankfurter, J., dissenting). Justice Holmes' proposition that "a suit arises under the law that creates the action," *American Well Works Co.* v. *Layne & Bowler Co.*, 241 U.S. 257, 260, 36 S.Ct. 585, 586, 60 L.Ed. 987 (1916), more closely approximates the current reading of the statute. See C. Wright, *The Law of Federal Courts* 93-94 (4th ed. 1983); P. Bator, P. Mishkin, D. Shapiro & H. Wechsler, *Hart and Wechsler's The Federal Courts and the Federal System* 883 (2d ed. 1973). Perhaps most influential is Justice Cardozo's axiom in *Gully* v. *First National Bank*, 299 U.S. 109, 112, 57 S.Ct. 96, 97, 81 L.Ed. 70 (1936), that "a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action." See 13 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 3562 (1975).

The practical difference between the Holmes and Cardozo formulations is not great; one who is asserting a federal right will almost invariably be asserting a federal claim. Both Holmes and Cardozo recognized that the mere presence of a federal issue, specifically the anticipation of a federal defense, would not permit invocation of federal question jurisdiction. *American Well Works Co.* v. *Layne & Bowler Co.*, 241 U.S. at 259, 36 S.Ct. at 586; *Gully* v. *First National Bank*, 299 U.S. at 113, 57 S.Ct. at 98.

Our recent cases are consistent with this received learning. In *Cox* v. *International Union of Operating Engineers*, 672 F.2d 421 (5th Cir. 1982), we dismissed a defamation suit against a labor union, stating:

> For original federal jurisdiction to obtain the complaint must raise 'a substantial claim founded "directly" upon federal law.' . . . It does not suffice that the answer raises a federal question. . . . Neither is it enough that the dispute is in some way connected with a federal matter. The nature of the cause of action asserted determines jurisdiction. . . .

Id. at 422-23 (citations omitted). Similarly, in *Maxwell* v. *First National Bank of Monroeville*, 638 F.2d 32, 34 (5th Cir. 1981), we held that an action brought by a shareholder against a national bank should not have been removed to federal court when the complaint "disclose[d] a state law claim." We added:

> We have held that for a case to 'arise under' federal law, a right or immunity created by that law must be an essential element of the plaintiff's claim. The federal right or immunity that forms the basis of the claim must be such that it will be supported if the federal law is given one construction or effect and defeated if it is given another . . . . In order to determine whether the claim arises under the Constitution or laws of the United States, we must look to the plaintiff's complaint unaided by anticipated defenses and with due regard to the real nature of the claim . . . .

Id. at 35 (citations omitted).

[1, 2] We think these paths lead to only one destination: the district court should not have entertained Superior's lawsuit. Like the claim whose dismissal we upheld in *Epps* v. *Bexar-Medina-Atacosa Counties Water Improvement Dist. No. 1*, 665 F.2d 594 (5th Cir.1982), Superior's lawsuit, when "[s]tripped to its essentials, . . . seeks enforcement of state-created contract rights." *Id.* at 595. Superior asserts a state-created right to be paid for gas it has delivered, not a federal right. Unquestionably, federal law affects the price that Superior may charge for the gas; however, the NGPA price *ceilings* do not give the gas producer a federal *right* to receive a particular price for its gas. *See Phillips Petroleum* v. *Texaco, Inc.*, 415 U.S. 125, 128-129, 94 S.Ct. 1002, 1004, 39 L.Ed.2d 209 (1974).

[3] Superior's allegations that the extension is an "existing contract" rather than a "rollover" do not fortify its jurisdictional cause. Superior is anticipating a defense, namely that the NGPA does not permit charges over the maximum price under the original agreement as adjusted for inflation. 15 U.S.C. § 3316(b)(1). Consistent with the notion that the lawsuit must proceed on a federal right, an anticipated defense may not be the basis for federal-question jurisdiction. *Epps* v. *Bexar-Medina-Atacosa Counties Water Improvement Dist. No. 1*, 665 F.2d at 595; *Maxwell* v. *First National Bank of Monroeville*, 638 F.2d at 35.

The Supreme Court's decision in *Phillips Petroleum* v. *Texaco, Inc.*, 415 U.S. 125, 94 S.Ct. 1002, 39 L.Ed.2d 209, is instructive. Texaco filed a suit claiming compensation for the helium constituent of FPC-regulated natural gas it has sold to Phillips. Texaco relied upon a federal appeals court decision holding that by virtue of the 1960 Helium Act Amendments the regulated price for natural gas did not include commingled helium. The Supreme Court held that the appeals court decision did not create a federal claim for the recovery of the reasonable value of the constituent helium, but only precluded a defense based on payment for the natural gas at FPC-regulated rates. *Id.* at 128, 94 S.Ct. at 1004. Having so held, the court concluded that "Texaco's suit for the reasonable value of the helium is, in effect, an action in *quantum meruit*, whose source is state law and not federal law," and that jurisdiction was unavailable under 28 U.S.C. § 1331. *Id.* at 129, 94 S.Ct. at 1004. "To the extent that the Natural Gas Act and the 1960 Helium Act Amendments may bear on this action for the recovery of the reasonable value of constituent helium in natural gas," the Court added, "it is clear that their effect is no more than to overcome a potential defense to the action." *Id.*

[4] Similarly, Superior's action here is in effect for breach of contract. The asserted role of the NGPA in this case corresponds

to that of the Helium Act in *Phillips Petroleum:* it deprives the other party of a defense. Just as the Natural Gas Act and the Helium Act established no right to recover for constituent helium, so the NGPA establishes no right to recover for intrastate natural gas. State law propels both lawsuits.[1]

Undoubtedly, the dispute between Superior and Pioneer pivots on an issue of federal law. But that was equally true in many of the other cases we have discussed. "[T]he federal issue must appear on the face of the complaint...." *Epps* v. *Bexar-Medina-Atacosa Counties Water Improvement Dist. No. 1,* 665 F.2d at 595. *See also Gully* v. *First National Bank,* 299 U.S. at 113, 57 S.Ct. at 98. The issue must be "an essential element of the plaintiff's claim." *Maxwell* v. *First National Bank of Monroeville,* 638 F.2d at 35. See *also Gully* v. *First National Bank,* 299 U.S. at 112, 57 S.Ct. at 97. The federal issue here, although dominating the controversy between the parties, simply does not constitute any part of Superior's claim.

[5] Nor do we believe that Superior's request in its prayer for relief for a declaration that the agreement is an "existing contract" enhances its prospects for federal jurisdiction. An action for declaratory relief may be used to obtain a judgment that another party does not have a federal right. C. Wright, *The Law*

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[1] We note that *Clark* v. *Gulf Oil Corp.,* 570 F.2d 1138 (3d Cir. 1977), *cert. denied,* 435 U.S. 970, 98 S.Ct. 1611, 56 L.Ed.2d 62 (1978), in which the Third Circuit concluded that federal question jurisdiction was available over putative class actions brought by natural gas consumers for underdeliveries of gas, is distinguishable. The complaints there averred an "action to recover damages and secure equitable relief for injuries.... sustained as a direct result of violations by defendants of section 7 of the Natural Gas Act...." *Id.* at 1143. Although the court ultimately reasoned that there was no private right of action under § 7, 15 U.S.C. § 717f, it noted that the question was not "insubstantial." *Id.* It therefore proceeded from the jurisdictional point to the merits. *Id.* at 1144. Here by contrast there is no colorable federal claim, or even a federal claim at all. In its complaint Superior alleges that its suit is "for breach of contract," and requests attorneys' fees under Texas law.

of Federal Courts 101; 10A C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 2767 (2d ed. 1983). In this sense, the declaratory judgment, remedy, 28 U.S.C. § 2201, expands federal jurisdiction. It enables a party to bring a federal action corresponding to the one that the opposing party might have brought. C. Wright, *The Law of Federal Courts* 101; 10A C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 2767.

Our survey of Superior's pleadings, however, discloses no federal right of Pioneer's. Superior does not even allege that Pioneer is claiming that the agreement is a "rollover contract". Assuming such an allegation were present, Pioneer would still have no federal right on which it could sue, given Superior's allegation that it failed to pay for the gas delivered. Although the declaratory judgment remedy permits a party to bootstrap its way into federal court by alleging the imminence of another party's federal action against it, Superior simply has not done this. That Superior has included a request for a declaratory judgment in its prayer for relief does not alter the fact that its complaint stated only a state-law claim for breach of contract.

We realize that the parties and the district court have devoted a considerable amount of time to this case. We are loathe to vacate a carefully considered judgment with the deft explanation of "Sorry, wrong court." Could we honestly read the question of subject-matter jurisdiction to be close, we might take hold of Professor Wright's sage advice that where "there is a debatable issue about federal question jurisdiction, pragmatic considerations must be taken into account." C. Wright, *The Law of Federal Courts* 96. But the question of federal-question jurisdiction here is not close. The district court lacked subject-matter jurisdiction over Superior's claim; we must vacate the judgment and dismiss the claim.

VACATED and DISMISSED.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 82-1464

D. C. Docket No. 3-80-1160-C

THE SUPERIOR OIL COMPANY
Plaintiff-Appellant,

VERSUS

PIONEER CORPORATION,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Texas

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Before CLARK, Chief Judge, JOHNSON and HIGGINBOTHAM, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record on appeal and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, vacated, and the appeal is dismissed;

IT IS FURTHER ORDERED that plaintiff-appellant pay to defendant-appellee the costs on appeal to be taxed by the Clerk of this Court.

June 6, 1983

Issued as Mandate: Aug. 4, 1983

APPENDIX C

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THE SUPERIOR OIL COMPANY	}	
VS.	}	CA 3-80-1160-C
PIONEER CORPORATION	}	

OPINION

On November 1, 1954, Plaintiff, The Superior Oil Corporation, agreed to sell to Defendant, Pioneer Corporation, gas produced by Plaintiff from the West Seminole Field in Gaines County, Texas. That contract was denoted a Gas Sales Agreement. It provided for a primary term of 25 years. Also, in that contract Plaintiff granted to Defendant an option to extend the term of the contract

> "For an additional period equivalent to the period gas is used for injection purposes in the West Seminole Field, or in the period which is necessary to enable Buyer to receive the quantity of gas not made available to it because of such injection operations, whichever is the shorter."

In a letter dated October 17, 1979, Defendant availed itself of the extended term option.

The Parties dispute the price that Defendant should be paying to Plaintiff for the gas bought and sold since November 1, 1979. The price payable is determined by the National Gas Policy Act of 1978 (15 U.S.C. § 3301 et seq.)[1]

The essential determination to be made is whether the option renewed contract is a "rollover contract," an "existing contract" or a "successor contract."

---

[1] As the Parties are asking for an interpretation of this Federal Statute, there is jurisdiction under 28 U.S.C. § 1331.

The difference in monetary terms as of November 1977 between a "rollover" contract and an "existing" or "successor" contract was $1.30 per MMBTU versus $2.214 per MMBTU. This, of course, is quite a substantial difference.

Plaintiff contends that the present contract is an "existing" contract which is defined in 15 U.S.C. § 3301, at (13), as:

> (13) Existing contract. — The term "existing contract" means any contract for the first sale of natural gas in effect on November 8, 1978.

Defendant contends that the present contract is a "rollover" contract which is defined in 15 U.S.C. § 3301, at (12), as:

> (12) Rollover contract. — The term "rollover contract" means any contract, entered into on or after November 9, 1978, for the first sale of natural gas that was previously subject to an existing contract which expired at the end of a fixed term (not including any extension thereof taking effect on or after November 9, 1978) specified by the provisions of such existing contract, as such contract was in effect on November 9, 1978, whether or not there is an identity of parties or terms with those of such existing contract.

A "successor" contract is defined at (14) of 15 U.S.C. § 3301 to be:

> (14) Successor to an existing contract. — The term "successor to an existing contract" means any contract, other than a rollover contract, entered into on or after November 9, 1978, for the first sale of natural gas which was previously subject to an existing contract, whether or not there is an identity of parties or terms with those of such existing contract.

Our first question is whether or not a contract was entered into after November 9, 1978. If so, then Plaintiff and Defendant's contract cannot be an "existing" contract as defined by the statute.

The normal rule of law is that when a party exercises an option, a new contract is formed at that time.[2] The Court sees no reason not to apply the usual rule. So Plaintiff and Defendant are operating under either a "rollover" or a "successor" contract.

What is the difference between the definition of a "rollover" contract and a "successor" contract? Simply that the predecessor to a "rollover" contract must have expired at the end of a fixed term.

The statutory definition, above, of "rollover" contract does seem to confuse matters. But the legislative history[3] and the interpretation of the statute by the Federal Energy Regulatory Commission, Department of Energy[4] (F.E.R.C.) are enlightening.

The legislative history gives the following examples of a "rollover" contract and a "successor" contract under the heading *Rollover Contract*:

> An existing contract which expires at the end of a fixed term qualifies as a rollover contract. An existing contract may have a specified term of five years which will be extended by operation of the contract for one or more years unless the producer gives notice of his intention to terminate the contract within a specified period of time in advance. Such a contract will qualify as a rollover contract at the end of the fixed five year term without regard to the extensions occurring after the date of enactment.
>
> An existing contract may also have a specified term of five years unless the price of natural gas subject to it is

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[2] See *Roguemore* v. *Ford Motor Co.*, 290 F. Supp. 130, 137 (N.D. Tex., 1967), aff'd, 400 F.2d 255 (5th Cir., 1968).

[3] H.R. Rep. No. 95-1752, 95th Cong., 2nd Sess., 70 (1978).

[4] See F.E.R.C. Order No. 68, 45 Fed. Reg. 5678 (Jan. 24, 1980), and F.E.R.C. Order No. 68-A, 45 Fed. Reg. 76676 (Nov. 20, 1980). These will not be set out verbatim in order to conserve space as the pertinent portions of each order are quite long.

> deregulated during that given period whereupon the price to be paid under the terms of the contract will be renegotiated by the parties to the contract. Such a contract will not qualify as a rollover contract by operation of the renegotiation provision until the end of the five year term. The contract resulting from the operation of the renegotiation provision qualifies instead as a successor to an existing contract.

The first of these two examples in the legislative history does not do much to clarify the statutory definition of a "rollover" contract; at least to a layman not versed in the law of oil and gas and the practices and procedures of the oil and gas industry.

The F.E.R.C. does possess expertise in oil and gas and has made sense out of both the statute and the legislative history.

The parenthetical "... (not including any extension thereof taking effect on or after November 9, 1978) ..." is the part of the statute that causes confusion over the definition of "rollover" contract.

The F.E.R.C. explains in Order No. 68 found at 45 Fed. Reg. 5678, 5682 that this parenthetical pertains to what are called "evergreen" contracts. In footnote 15 on that page, the F.E.R.C. provides this explanation of an "evergreen clause:"

> "Evergreen clauses" provide that the term of the contract will be extended for some specified period beginning with the date of expiration of the primary term. The contract would remain in effect until terminated by action of one of the parties after giving the required notice prior to the anniversary date. Other variations of this type of clause also prevail in the industry.

The F.E.R.C. then goes on to explain that an "evergreen" contract will not be a "rollover" contract until some action is taken by the parties to form or amend the contract. But the contract need only be entered into or amended after the expiration of the existing contract or the expiration of any extension of it that commenced before November 9, 1978, in order to be a

"rollover" contract. In short, in the instance of an "evergreen" contract, the contract can be "rolled over" for the purposes of this law by affirmative action by the parties at any time after the existing contract's original term or any extension of it that was entered into before November 9, 1978, has expired on or after November 9, 1798.

The present contract is not an "evergreen" contract because Defendant had to take an affirmative action to exercise the option granted by Plaintiff.

So as the primary term of the existing contract expired November 1, 1979, a date after November 8, 1978, and a new contract was then formed by Defendant's exercise of the option, the contract that the parties are operating under fits the statutory definition of a "rollover" contract.

Partial summary judgment will therefore be rendered for Defendant.

W. M. TAYLOR
United States District Judge

Feb. 16, 1982
Date

APPENDIX D

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THE SUPERIOR OIL COMPANY,
Plaintiff,
vs.
PIONEER CORPORATION,
Defendant.

CIVIL ACTION
No. 3-80-1160-C

FINAL JUDGMENT

Plaintiff and Defendant each filed a motion for partial summary judgment in this case. The parties submitted affidavits and briefs in support of their respective motions and the Court heard oral argument on such motions. Under date of February 16, 1982, the Court entered its Opinion overruling the Plaintiff's motion for partial summary judgment and sustaining Defendant's motion for partial summary judgment and holding that the Gas Sales Agreement of November 1, 1954, which is the subject of this litigation, by virtue of Defendant's exercise of its option to extend the primary term thereof, became a "rollover contract" as of November 1, 1979, within the meaning of the Natural Gas Policy Act of 1978 ("NGPA") (15 U.S.C. § 3301 et seq.).

Following the Court's Opinion, the parties entered into and filed an Agreed Stipulation of Plaintiff and Defendant, in which the parties have agreed as to all facts and matters prerequisite to the entry by this Court of a final appealable judgment based on the Court's Opinion of February 16, 1982, with respect to the cross-motions for partial summary judgment, and the parties have thus agreed that such a final judgment may now be entered. This Judgment is based, in part, on such Agreed Stipulation.

Since the natural gas delivered by Plaintiff to Defendant since October 31, 1979, under said Gas Sales Agreement, as extended, has not been paid for on any basis, Plaintiff is entitled to a

money judgment for such gas even through the Court has sustained Defendant's position with respect to the classification of such gas under the NGPA.

Accordingly, it is ORDERED, ADJUDGED, DECLARED AND DECREED as follows:

1. With respect to the gas delivered by Plaintiff to Defendant under said Gas Sales Agreement, as extended, from November 1, 1979, through January 31, 1982, Defendant shall pay to Plaintiff the sum of $319,339.

2. With respect to all of the gas delivered by Plaintiff to Defendant during each month following the month of January, 1982, Defendant shall pay to Plaintiff the maximum lawful price payable under Section 106(b) of the NGPA (15 U.S.C. § 3316(b)) (intrastate rollover contracts), based on a maximum lawful price of $1.30 per MMBTU for the month of October, 1979, and a maximum lawful price for each succeeding month equal to the maximum lawful price per MMBTU prescribed for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such succeeding month pursuant to Section 101(a) of the NGPA (15 U.S.C. § 3311(a)) and Section 271.102 of the regulations of the Federal Energy Regulatory Commission issued thereunder.

3. In addition to the principal amounts to be paid under Paragraphs 1 and 2 above, Defendant shall pay to Plaintiff prejudgment interest on all such principal amounts owing to Plaintiff at the date of this Judgment at the rate of six percent per annum from the due date of the principal amount owing with respect to the gas delivered during each month to the date of this Judgment. Such due date for gas delivered during each month shall be the 24th day of the next succeeding month. The principal amount owing with respect to the gas delivered during each month commencing with November, 1979, and extending through January, 1982, shall be the amount set out for such

month in the schedule attached as Exhibit "1" to the above mentioned Agreed Stipulation of Plaintiff and Defendant.

4. In addition to other amounts provided for in this Judgment, Plaintiff is entitled to recover a reasonable amount as attorney fees. The Court considers $10,000.00 to be such a reasonable amount in the circumstances of this case, including all trial and appellate procedure, and Defendant shall pay such amount to Plaintiff.

5. All amounts owing to Plaintiff in accordance with the foregoing Paragraphs 1, 2, 3 and 4 shall bear, and Defendant shall pay to Plaintiff, post-judgment interest at the rate of nine percent per annum from and after the date of this Judgment until paid.

6. Court costs shall be borne by Plaintiff and Pioneer as such costs have been incurred by them, respectively.

7. Plaintiff's acceptance of the amounts payable to it under this Judgment shall not prejudice Plaintiff's right to appeal this Court's determination that the above mentioned Gas Sales Agreement, as extended, is a "rollover contract" within the meaning of the NGPA rather than an "existing contract", as contended by Plaintiff.

W. M. TAYLOR
United States District Judge

August 9, 1982
Date

APPROVED:

LEO J. HOFFMAN
LEO J. HOFFMAN, Attorney for
Plaintiff, The Superior Oil Company

JOHN L. ESTES
JOHN L. ESTES, Attorney for
Defendant, Pioneer Corporation

APPENDIX E

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 82-1464

THE SUPERIOR OIL COMPANY,
Plaintiff-Appellant,

versus

PIONEER CORPORATION
Defendant-Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS

ON PETITION FOR REHEARING
(July 25, 1983)

Before CLARK, Chief Judge, JOHNSON and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

United States Circuit Judge

APPENDIX F

IN THE
UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

THE SUPERIOR OIL COMPANY, *Plaintiff.* vs. PIONEER CORPORATION, *Defendant.*	CIVIL ACTION No. 3-80-1160-C

AGREED STIPULATION OF PLAINTIFF AND DEFENDANT

The Court, through its letter of September 16, 1981 and its Opinion of February 16, 1982, has sustained Defendant's motion for partial summary judgment and overruled Plaintiff's motion for partial summary judgment. There is no dispute between the parties as to the facts or the law which must be considered in relating the Court's granting of Defendant's motion for partial summary judgment to a final judgment from which an appeal may be taken by Plaintiff, The Superior Oil Company. Without prejudice to the position of Plaintiff that the Court has erred in sustaining Defendant's motion for partial summary judgment and in failing to sustain Plaintiff's motion for partial summary judgment, and in order to avoid unnecessary trial procedure and to permit the prompt entry by the Court of a final judgment and an expeditious appeal therefrom by Plaintiff, the parties desire to stipulate, for inclusion in the record of this case, to such matters as are pertinent to such final judgment and expeditious appeal. Accordingly, Plaintiff, The Superior Oil Company, and Defendant, Pioneer Corporation, hereby stipulate and agree that the following matters are true and correct and that such matters may be treated as established in the record of this case just as if they had been proven in a trial:

1. Under the terms of a certain Gas Sales Agreement (the "Agreement"), dated November 1, 1954, The Superior Oil

Company ("Superior") agreed to sell and Pioneer Natural Gas Company, now named Pioneer Corporation ("Pioneer"), agreed to buy Superior's portion of the natural gas available for sale at the outlet of a certain gas processing plant in the West Seminole Field, Gaines County, Texas.

2. The duration of the Agreement was provided for in Section 10 as follows:

> "This Agreement shall be effective as of November 1, 1954, and shall continue in effect for a term of twenty-five (25) years from and after such date, provided that the primary term may be extended at the option of Buyer [Pioneer] for an additional period equivalent to the period gas is used for injection purposes in the West Seminole Field, or the period which is necessary to enable Buyer to receive the quantity of gas not made available to it because of such injection operations, whichever is the shorter."

3. On October 17, 1979, Pioneer, by means of a letter addressed to Superior, exercised its option to extend the primary term of the agreement from November 1, 1979, forward, in accordance with the above quoted provisions of Section 10 of the Agreement.

4. The Natural Gas Policy Act of 1978 ("NGPA") (15 U.S.C. § 3301 et seq.) was enacted on November 9, 1978.

5. The sale of gas by Superior to Pioneer pursuant to the Agreement, as its duration has been extended, is a "first sale" of gas, as that term is defined in Section 2(21) of the NGPA (15 U.S.C. § 3301(21)); the Agreement was in effect on the day before the date of enactment of the NGPA; and such gas was not "committed or dedicated to interstate commerce" on the day before the date of enactment of the NGPA, within the meaning of that term as used in the NGPA.

6. Pioneer contends that the Agreement, as extended, is a "rollover contract", as defined in Section 2(12) of the NGPA (15 U.S.C. § 3301(12)), and that, therefore, the maximum

lawful price for which the gas may be sold pursuant to the Agreement, as extended, is governed by Section 106(b) of the NGPA (15 U.S.C. § 3316(b)).

7. Superior contends that the Agreement, as extended, is an "existing contract", as defined in Section 2(13) of the NGPA (15 U.S.C. § 3301(13)), and that, therefore, the maximum lawful price for which the gas may be sold pursuant to the Agreement, as extended, is governed by Section 105 of the NGPA (15 U.S.C. § 3315).

8. In sustaining Pioneer's motion for partial summary judgment, the Court has ruled that the Agreement, as extended, is a "rollover contract", as defined in the NGPA.

9. Pioneer has not paid Superior for any of the gas delivered by Superior to Pioneer pursuant to the Agreement, as extended, since October 31, 1979. For gas delivered pursuant to a "rollover contract", Pioneer will pay Superior the maximum lawful price provided for with respect to such gas under Section 106(b) of the NGPA, which in the case of the month of October, 1979, was $1.30 per MMBTU and in the case of each month thereafter was the maximum lawful price per MMBTU prescribed for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month thereafter pursuant to Section 101(a) of the NGPA (15 U.S.C. § 3311(a)) and Section 271.102 of the regulations of the Federal Energy Regulatory Commission ("FERC") issued thereunder.

10. The volumes of gas delivered by Superior during each month, commencing with November, 1979, and extending through January, 1982, the rollover price to be paid therefor during each such month, and the monthly and accumulated dollar amounts Pioneer will pay to Superior therefor on the basis of such rollover prices are as set forth in the schedule attached hereto as Exhibit "1". On the basis of the Court's ruling sustaining Pioneer's motion for partial summary judgment, a final

judgment may be entered in favor of Superior for the accumulated amount of $319,339 to cover such gas delivered to Pioneer through January, 1982.

11. With respect to the gas delivered by Superior to Pioneer during each month following the month of January, 1982, Pioneer will pay to Superior therefor as the rollover price the maximum lawful price per MMBTU prescribed for the preceding month pursuant to Section 106(b) of the NGPA multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month of gas delivery pursuant to Section 101(a) of the NGPA and Section 271.102 of the regulations of the FERC issued thereunder. On the basis of the Court's ruling sustaining Pioneer's motion for partial summary judgment, a final declaratory judgment to that effect may be entered to cover such months following January, 1982.

12. If the Court had sustained Superior's motion for partial summary judgment, the Court in that event would have in effect ruled that the Agreement, as extended, is an "existing contract", as defined in the NGPA, and that, therefore, Pioneer would have been obliged to pay Superior for the gas delivered to Pioneer the maximum lawful price provided for with respect to such gas under Section 105 of the NGPA. In that case Pioneer would have been obliged to pay Superior the price provided for under the terms of the Agreement (since such gas was subject to the Agreement on the date of enactment of the NGPA), as the Agreement was in effect on such date. Such terms include the price renegotiation provisions of Section 3 of the Agreement, under which Superior would have been entitled to receive, from November 1, 1979, forward, the then "going price" for gas, i.e., the price established under Section 102 of the NGPA (15 U.S.C. § 3312) for the month of November, 1979.

13. The volumes of gas delivered by Superior during each month, commencing with November, 1979, and extending through January, 1982, the price which Pioneer would be

obliged to pay Superior therefor under the Agreement, as extended, if it were classified as an "existing contract" within the meaning of the NGPA, and the monthly and accumulated dollar amounts which would be due therefor on the basis of such classification are as set forth in the schedule attached hereto as Exhibit "2". On the basis of such classification, if it had occurred, Superior would have received a judgment in its favor for the accumulated amount of $499,429 to cover such gas delivered to Pioneer through January, 1982, and a declaratory judgment to the effect that for the period after January, 1982, Pioneer should continue to pay Superior such "going price" in effect as of November 1, 1979 (i.e., the price established under Section 102 of the NGPA for the month of November, 1979), until such time as the price renegotiation provisions of Section 3 of the Agreement are again invoked.

14. Superior is entitled to a judgment for prejudgment interest at the legal rate of six percent per annum on all amounts owing to Superior at the time of judgment in accordance with Paragraphs 10 and 11 of this Stipulation, from the due date (as provided in Section 4 of the Agreement) of each such monthly amount reflected in Exhibit "1" and each subsequent monthly amount to the date of judgment. Such due date for gas delivered each month is the 24th day of the next succeeding month. A final judgment for pre-judgment interest may be entered in favor of Superior accordingly.

15. Since the amounts owing to Superior in accordance with this Stipulation represent valid claims founded on a written contract, Pioneer should pay to Superior, in addition, a reasonable amount as attorney fees. The parties agree that Ten Thousand Dollars ($10,000) shall be considered a reasonable amount for such purpose, including all trial and appellate procedure, and that a final judgment for such amount as attorney fees may be entered in favor of Superior accordingly; provided, however, that if Superior appeals such judgment and if by a final decision the

Agreement is held to be an "existing contract" within the meaning of the NGPA, then Pioneer shall pay to Superior, promptly following such final decision, the additional amount of Thirty Thousand Dollars ($30,000) as attorney fees.

16. All amounts owing to Superior in accordance with Paragraphs 10, 11, 14 and 15 of this Stipulation shall bear post-judgment interest at the rate of nine percent per annum from and after the date of judgment until paid.

17. If the Court had sustained Superior's motion for partial summary judgment, Superior in that event would have been entitled to pre-judgment interest on the larger monthly amounts reflected in Exhibit "2" and on the larger subsequent monthly amounts, as described in Paragraph 13 of this Stipulation, up to the date of judgment, calculated in the same manner and at the same rate as set forth in Paragraph 14 of this Stipulation. Similarly, in that event, Superior would have been entitled to post-judgment interest on such larger amounts, calculated in the same manner and at the same rate as set forth in Paragraph 16 of this Stipulation.

18. Court costs shall be borne by Superior and Pioneer as such costs have been incurred by them, respectively.

19. This Stipulation, when executed, may be filed as part of the record of this case and a final judgment may be entered by the United States District Court for the Northern District of Texas, consistent with its Order sustaining Pioneer's motion for partial summary judgment and with this Stipulation, without further trial proceedings.

ENTERED into this 6th day of August, 1982.

LEO J. HOFFMAN
LEO J. HOFFMAN, Attorney for
Plaintiff, The Superior Oil
Company

JOHN L. ESTES
JOHN L. ESTES, Attorney for
Defendant, Pioneer Corporation

GAS SALES TO PIONEER CORPORATION
WEST SEMINOLE PLANT
GAINES COUNTY, TEXAS

Payments Due Under NGPA Section 106(b)
(Rollover Contract)

Month	Volume (Mcf)	Btu/Mcf @14.73, Sat.	Volume (MMBtu)	Rollover Price	Monthly Payments Due	Accumulated Monthly Payments Due
Nov., 1979	3,029	1,008	3,053	$1.309	$ 3,996	$ 3,996
Dec.	5,384	1,015	5,465	1.318	7,203	11,199
Jan., 1980 .	4,085	995	4,065	1.327	5,394	16,593
Feb.	3,988	1,030	4,108	1.336	5,488	22,081
March	4,361	1,030	4,492	1.346	6,046	28,127
April	3,810	1,013	3,860	1.356	5,234	33,361
May	6,015	1,056	6,352	1.366	8,677	42,038
June	6,561	1,020	6,692	1.377	9,215	51,253
July	7,089	1,016	7,202	1.388	9,996	61,249
August	8,711	1,021	8,894	1.400	12,452	73,701
Sept.....	5,916	1,018	6,022	1.412	8,503	82,204
Oct.	3,594	1,015	3,648	1.424	5,195	87,399
Nov.....	3,047	1,046	3,187	1.435	4,573	91,972
Dec.	5,774	1,018	5,878	1.446	8,500	100,472
Jan., 1981 .	12,585	1,046	13,164	1.457	19,180	119,652
Feb.	9,390	1,041	9,775	1.470	14,369	134,021
March	7,784	1,056	8,220	1.483	12,190	146,211
April	5,989	1,056	6,324	1.496	9,461	155,672
May	4,110	1,056	4,340	1.506	6,536	162,208
June	2,873	1,011	2,905	1.516	4,404	166,612
July	8,961	1,034	9,266	1.526	14,140	180,752
August	14,077	1,054	14,837	1.534	22,760	203,512
Sept.....	10,990	1,051	11,550	1.542	17,810	221,322
Oct.	13,329	1,060	14,129	1.550	21,900	243,222
Nov.....	14,192	1,066	15,129	1.562	23,631	266,853
Dec.	15,883	1,070	16,995	1.574	26,750	293,603
Jan., 1982 .	14,928	1,087	16,227	1.586	25,736	319,339

EXHIBIT "1"

GAS SALES TO PIONEER CORPORATION
WEST SEMINOLE PLANT
GAINES COUNTY, TEXAS

Payments Which Would Be Due Under NGPA Section 105
(Existing Intrastate Contract)

Month	Volume (Mcf)	Btu/Mcf @14.73, Sat.	Volume (MMBtu)	Sec. 105 Price	Monthly Payments Due	Accumulated Monthly Payments Due
Nov., 1979	3,029	1,008	3,053	$2.314	$ 7,065	$ 7,065
Dec.	5,384	1,015	5,465	2.314	12,646	19,711
Jan., 1980 .	4,085	995	4,065	2.314	9,406	29,117
Feb.	3,988	1,030	4,108	2.314	9,506	38,623
March	4,361	1,030	4,492	2.314	10,394	49,017
April	3,810	1,013	3,860	2.314	8,932	57,949
May	6,015	1,056	6,352	2.314	14,699	72,648
June	6,561	1,020	6,692	2.314	15,485	88,133
July	7,089	1,016	7,202	2.314	16,665	104,798
August	8,711	1,021	8,894	2.314	20,581	125,379
Sept.	5,916	1,018	6,022	2.314	13,935	139,314
Oct.	3,594	1,015	3,648	2.314	8,441	147,755
Nov.	3,047	1,046	3,187	2.314	7,375	155,130
Dec.	5,774	1,018	5,878	2.314	13,602	168,732
Jan., 1981 .	12,585	1,046	13,164	2.314	30,461	199,193
Feb.	9,390	1,041	9,775	2.314	22,619	221,812
March	7,784	1,056	8,220	2.314	19,021	240,833
April	5,989	1,056	6,324	2.314	14,634	255,467
May	4,110	1,056	4,340	2.314	10,043	265,510
June	2,873	1,011	2,905	2.314	6,722	272,232
July	8,961	1,034	9,266	2.314	21,442	293,674
August	14,077	1,054	14,837	2.314	34,333	328,007
Sept.	10,990	1,051	11,550	2.314	26,727	354,734
Oct.	13,329	1,060	14,129	2.314	32,695	387,429
Nov.	14,192	1,066	15,129	2.314	35,009	422,438
Dec.	15,883	1,070	16,995	2.314	39,326	461,764
Jan., 1982 .	14,928	1,087	16,227	2.314	37,665	499,429

EXHIBIT "2"

APPENDIX G

15 U.S.C. § 3301

For purposes of this Act—

(1) Natural Gas. The term "natural gas" means either natural gas unmixed, or any mixture of natural and artificial gas.

(2) Well. The term "well" means any well for the discovery or production of natural gas, crude oil, or both.

(3) New well. The term "new well" means any well—

(A) the surface drilling of which began on or after February 19, 1977; or

(B) the depth of which was increased, by means of drilling on or after February 19, 1977, to a completion location which is located at least 1,000 feet below the depth of the deepest completion location of such well attained before February 19, 1977.

(4) Old well. The term "old well" means any well other than a new well.

(5) Marker well.

(A) General rule. The term "marker well" means any well from which natural gas was produced in commercial quantities at any time after January 1, 1970, and before April 20, 1977.

(B) New wells. The term "marker well" does not include any new well under paragraph (3)(A) but includes any new well under paragraph (3)(B) if such well qualifies as a marker well under subparagraph (A) of this paragraph.

(6) Reservoir. The term "reservoir" means any producible natural accumulation of natural gas, crude oil, or both, confined—

(A) by impermeable rock or water barriers and characterized by a single natural pressure system; or

(B) by lithologic or structural barriers which prevent pressure communication.

(7) Completion location. (A) General rule. The term "completion location" means any subsurface location from which natural gas is being or has been produced in commercial quantities.

(B) Marker well. The term "completion location", when used with reference to any marker well, means any subsurface location from which natural gas was produced from such well in commercial quantities after January 1, 1970, and before April 20, 1977.

(8) Proration unit. The term "proration unit" means—

(A) any portion of a reservoir, as designated by the State or Federal agency having regulatory jurisdiction with respect to production from such reservoir, which will be effectively and efficiently drained by a single well;

(B) any drilling unit, production unit, or comparable arrangement, designated or recognized by the State or Federal agency having jurisdiction with respect to production from the reservoir, to describe that portion of such reservoir which will be effectively and efficiently drained by a single well; or

(C) if such portion of a reservoir, unit, or comparable arrangement is not specifically provided for by State law or by any action of any State or Federal agency having regulatory jurisdiction with respect to production from such reservoir, any voluntary unit agreement or other comparable arrangement applied, under local custom or practice within the locale in which such reservoir is situated, for the purpose of describing a portion of a reservoir which may be effectively and efficiently drained by a single well.

(9) New lease. The term "new lease", when used with respect to the Outer Continental Shelf, means a lease, entered into on or after April 20, 1977, of submerged acreage.

(10) Old lease. The term "old lease", when used with respect to the Outer Continental Shelf, means any lease other than a new lease.

(11) New contract. The term "new contract" means any contract, entered into on or after the date of the enactment of this Act, for the first sale of natural gas which was not previously subject to an existing contract.

(12) Rollover contract. The term "rollover contract" means any contract, entered into on or after the date of the enactment of this Act, for the first sale of natural gas that was previously subject to an existing contract which expired at the end of a fixed term (not including any extension thereof taking effect on or after such date of enactment) specified by the provisions of such existing contract, as such contract was in effect on the date of the enactment of this Act, whether or not there is an identity of parties or terms with those of such existing contract.

(13) Existing contract. The term "existing contract" means any contract for the first sale of natural gas in effect on the day before the date of the enactment of this Act.

(14) Successor to an existing contract. The term "successor to an existing contract" means any contract, other than a rollover contract, entered into on or after the date of the enactment of this Act, for the first sale of natural gas which was previously subject to an existing contract, whether or not there is an identity of parties or terms with those of such existing contract.

(15) Interstate pipeline. The term "interstate pipeline" means any person engaged in natural gas transportation subject to the jurisdiction of the Commission under the Natural Gas Act.

(16) Intrastate pipeline. The term "intrastate pipeline" means any person engaged in natural gas transportation (not including gathering) which is not subject to the jurisdiction of the Commission under the Natural Gas Act (other than any such pipeline which is not subject to the jurisdiction of the Commission solely by reason of section 1(c) of the Natural Gas Act [15 USCS § 717(c)]).

(17) Local distribution company. The term "local distribution company" means any person, other than any interstate pipeline or any intrastate pipeline, engaged in the transportation, or local distribution, of natural gas and the sale of natural gas for ultimate consumption.

(18) Committed or dedicated to interstate commerce. (A) General rule. The term "committed or dedicated to interstate commerce", when used with respect to natural gas, means —

(i) natural gas which is from the Outer Continental Shelf; and

(ii) natural gas which, if sold, would be required to be sold in interstate commerce (within the meaning of the Natural Gas Act) under the terms of any contract, any certificate under the Natural Gas Act or any provision of such Act.

(B) Exclusion. Such term does not apply with respect to —

(i) natural gas sold in interstate commerce (within the meaning of the Natural Gas Act) —

(I) under section 6 of the Emergency Natural Gas Act of 1977 [15 USCS § 717 note];

(II) under any limited term certificate, granted pursuant to section 7 of the Natural Gas Act [15 USCS § 717f], which contains a pregrant of abandonment of service for such natural gas;

(III) under any emergency regulation under the second proviso of section 7(c) of the Natural Gas Act [15 USCS § 717f(c)]; or

(IV) to the user by the producer and transported under any certificate, granted pursuant to section 7(c) of the Natural Gas Act [15 USCS § 717f(c)], if such certificate was specifically granted for the transportation of that natural gas for such user;

(ii) natural gas for which abandonment of service was granted before the date of enactment of this Act under section 7 of the Natural Gas Act [15 USCS § 717f]; and

(iii) natural gas which, but for this clause, would be committed or dedicated to interstate commerce under subparagraph (A)(ii) by reason of the action of any person (including any successor in interest thereof, other than by means of any reversion of a lease-hold interest), if on May 31, 1978 —

(I) neither that person, nor any affiliate thereof, had any right to explore for, develop, produce, or sell such natural gas; and

(II) such natural gas was not being sold in interstate commerce (within the meaning of the Natural Gas Act) for resale (other than any sale described in clause (i)(I), (II), or (III)).

(19) Certified natural gas. The term "certified natural gas" means natural gas transported by any interstate pipeline in a facility for which there is in effect a certificate issued under section 7(c) of the Natural Gas Act [15 USCS § 717f(c)]. Such term does not include natural gas sold to the user by the producer and transported pursuant to a certificate which is specifically issued under section 7(c) of the Natural Gas Act [15 USCS § 717f(c)] for the transportation of that natural gas, for

such user unless such natural gas is used for the generation of electricity.

(20) Sale. The term "sale" means any sale, exchange, or other transfer for value.

(21) First sale. (A) General rule. The term "first sale" means any sale of any volume of natural gas —

(i) to any interstate pipeline or intrastate pipeline;

(ii) to any local distribution company;

(iii) to any person for use by such person;

(iv) which precedes any sale described in clauses (i), (ii), or (iii); and

(v) which precedes or follows any sale described in clauses (i), (ii), (iii), or (iv) and is defined by the Commission as a first sale in order to prevent circumvention of any maximum lawful price established under this Act.

(B) Certain sales not included. Clauses (i), (ii), (iii), or (iv) of subparagraph (A) shall not include the sale of any volume of natural gas by any interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof, unless such sale is attributable to volumes of natural gas produced by such interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof.

(22) Deliver. The term "deliver" when used with respect to any first sale of natural gas, means the physical delivery from the seller; except that in the case of the sale of proven reserves in place to any interstate pipeline, any intrastate pipeline, any local distribution company, or any user of such natural gas, such term means the transfer of title to such reserves.

(23) Certificate. The term "certificate", when used with respect to the Natural Gas Act, means a certificate of public convenience and necessity issued under such Act.

(24) Commission. The term "Commission" means the Federal Energy Regulatory Commission.

(25) Federal agency. The term "Federal agency" has the same meaning as given such term in section 105 of title 5, United States Code [5 USCS § 105].

(26) Person. The term "person" includes the United States, any State, and any political subdivision, agency, or instrumentality of the foregoing.

(27) Affiliate. The term "affiliate", when used in relation to any person, means another person which controls, is controlled by, or is under common control with, such person.

(28) Electric Utility. The term "electric utility" means any person to the extent such person is engaged in the business of the generation of electricity and sale, directly or indirectly, of electricity to the public.

(29) Mcf. The term "Mcf", when used with respect to natural gas, means 1,000 cubic feet of natural gas measured at a pressure of 14.73 pounds per square inch (absolute) and a temperature of 60 degrees Fahrenheit.

(30) Btu. The term "Btu" means British thermal unit.

(31) Month. The term "month" means a calendar month.

(32) Mile. The term "mile" means a statute mile of 5,280 feet.

(33) United States. The term "United States" means the several States and includes the Outer Continental Shelf.

(34) State. The term "State" means each of the several States and the District of Columbia.

(35) Outer Continental Shelf. The term "Outer Continental Shelf" has the same meaning as such term has under section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a) [43 USCS & 1331(a)]).

(36) Prudhoe Bay Unit of Alaska. The term "Prudhoe Bay Unit of Alaska" means the geographic area subject to the voluntary unit agreement approved by the Commissioner of the Department of Natural Resources of the State of Alaska on June 2, 1977, and referred to as the "affected area" in Conservation Order No. 145 of the Alaska Oil and Gas Conservation Committee, Division of Oil and Gas Conservation, Department of Natural Resources of the State of Alaska, as such order was in effect on June 1, 1977, and determined without regard to any adjustments in the description of the affected area permitted to be made under such order.

(37) Antitrust laws. The term "Federal antitrust laws" means the Sherman Act (15 U.S.C. 1 et seq. [15 USCS §§ 1 et seq.]), the Clayton Act (15 U.S.C. 12, 13, 14-19, 20, 21, 22-27), the Federal Trade Commission Act (15 U.S.C. 41 et seq. [15 USCS §§ 41 et seq.]), sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8-9 [15 USCS §§ 8, 9]), and the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

(Nov. 9, 1978, P.L. 95-621, § 2, 92 Stat. 3352.)

15 USC § 3315

§ 3315. Ceiling price for sales under existing intrastate contracts

(a) Application. The maximum lawful price computed under subsection (b) shall apply to any first sale of natural gas delivered during any month in the case of natural gas, sold under any existing contract or any successor to an existing contract, which was not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act.

(b) Maximum lawful price. (1) General rule. Subject to paragraphs (2) and (3), the maximum lawful price under this section shall be the lower of —

(A) the price under the terms of the existing contract, to which such natural gas was subject on the date of the enactment of this Act, as such contract was in effect on such date; or

(B) the maximum lawful price, per million Btu's computed for such month under section 102 [15 USCS § 3312] (relating to new natural gas).

(2) Contract price exceeding new gas ceiling price on enactment. In the case of any natural gas described in subsection (a) for which the contract price applicable on the date of the enactment of this Act exceeds the maximum lawful price, per million Btu's computed for such date under section 102 [15 USCS § 3312] (relating to new natural gas), the maximum lawful price under this section shall be the higher of —

(A) the maximum lawful price per million Btu's computed for such month under section 102 [15 USCS § 3312]; or

(B)(i) the contract [contract] price on the date of the enactment of this Act, in the case of the month in which this Act is enacted; and (ii) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subparagraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month.

(3) Price increases resulting from indefinite price escalator clauses. (A) In general. effective January 1985, and each month thereafter, in the case of any first sale of natural gas, which is sold at a price established under any indefinite price escalator clause of any existing contract or successor to an existing contract and for which the contract price on December 31, 1984, is higher than $1.00 per million Btu's, the maximum lawful price under this section for any such natural gas delivered during any month shall be the higher of —

(i) the maximum lawful price, per million Btu's, computed under paragraph (2)(B); or

(ii)(I) in the case of January 1985, the maximum lawful price, per million Btu's, computed under section 102 [15 USCS § 3312] (relating to new natural gas) for such month; and

(II) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this clause for the immediately preceding month multiplied by the monthly equivalent of the sum of a factor equal to the annual inflation adjustment factor applicable for such month plus .03.

(B) Definition of indefinite price escalator clause. For purposes of this paragraph, the term "indefinite price escalator clause" includes any provision of any contract —

(i) which provides for the establishment or adjustment of the price for natural gas delivered under such contract by reference to other prices for natural gas, for crude oil, or for refined petroleum products; or

(ii) which allows for the establishment or adjustment of the price of natural gas delivered under such contract by negotiation between the parties.

(C) Contract modifications after May 3, 1978, to be disregarded. In the case of any natural gas which was subject to any contract on May 3, 1978, that contained an indefinite price escalator clause on such date, no amendment to or modification of the operation of such contract made after such date may have the effect of limiting or precluding the application of this paragraph on or after January 1, 1985, to prices allowed with respect to such natural gas.

(D) Exclusion. Subparagraph (A) shall not apply to any first sale of new natural gas (as defined in section

102(c) [15 USCS § 3312(c)]), stripper well natural gas (as defined in section 108(b) [15 USCS § 3318(b)]), high-cost natural gas (as defined in section 107(c) [15 USCS § 3317(c)]), natural gas produced from a new, onshore production well (as defined in section 103(c) [15 USCS § 3313(c)]) from a completion location located at a depth of more than 5,000 feet, and, beginning July 1, 1987, or, if later, the date of expiration of any price controls reimposed under section 122 [15 USCS § 3332], natural gas produced from any new, onshore production well (as defined in section 103(c) [15 USCS § 3313(c)]) from a completion location located at a depth of 5,000 feet or less.

(c) **Definition of contract price.** For purposes of this section, the term "contract price", when used with respect to any specific date, means —

(1) the price paid, per million Btu's, under a contract for deliveries of natural gas occurring on such date; or

(2) if no deliveries of natural gas occurred under such contract on such date, the price, per million Btu's, that would have been paid had such deliveries occurred on such date.

(Nov. 9, 1978, P.L. 95-621, Title I, Subtitle A, § 105, 92 Stat. 3363.)

15 USC § 3414(c)

(c) **Criminal penalties.** (1) Violations of act. Except in the case of violations covered under paragraph (3), any person who knowlingly and willfully violates any provision of this Act shall be subject to —

(A) a fine of not more than $5,000; or

(B) imprisonment for not more than two years; or

(C) both such fine and such imprisonment.

(2) Violation of rules or orders generally. Except in the case of violations covered under paragraph (3), any person who knowingly and willfully violates any rule or order under this Act (other than an order of the Commission assessing a civil penalty under subsection (b)(4)(E)), shall be subject to a fine of not more than $500 for each violation.

(3) Violations of emergency orders. Any person who knowingly and willfully violates an order under section 302 [15 USCS § 3362] or an order or supplemental order under section 303 [15 USCS § 3363] shall be fined not more than $50,000 for each violation.

(4) Each day separate violation. For purposes of this subsection, each day of violation shall constitute a separate violation.

(5) Definition of knowingly. For purposes of this subsection, the term "knowingly", when used with respect to any act or omission by any person, means such person —

(A) had actual knowledge; or

(B) had constructive knowledge deemed to be possessed by a reasonable individual who acts under similar circumstances.

(Nov. 9, 1978, P. L. 95-621, Title V, § 504, 92 Stat. 3401.)

28 U.S.C. § 1331

Federal question

The district court shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

(As amended Dec. 1, 1980, Pub. L. 96-486, § 2(a), 94 Stat. 2369.)

28 USC § 1337

Commerce and antitrust regulations; amount in controversy, costs

(a) The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies: *Provided, however,* That the district courts shall have original jurisdiction of an action brought under section 11707 of title 49 [49 USCS § 11707], only if the matter in controversy for each receipt or bill of lading exceeds $10,000, exclusive of interest and costs.

(a) Except when express provision therefor is otherwise made in a statute of the United States, where a plaintiff who files the case under section 11707 of title 49 [49 USCS § 11707], originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of any interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) The district courts shall not have jurisdiction under this section of any matter within the exclusive jurisdiction of the Court of International Trade under chapter 95 of this title [28 USCS §§ 1581 et seq.].

(As amended Oct. 20, 1978, P.L. 95-486, § 9(a), 92 Stat. 1633; Oct. 10, 1980, P. L. 96-417, Title V, § 505, 94 Stat. 1743; Jan. 12, 1983, P. L. 97-449, § 5(f), 96 Stat. 2442.)

28 U.S.C. § 2201

Creation of remedy

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1954 [26 USCS § 7428] or a proceeding under section 505 or 1146 of title 11 [11

USCS § 505 or 1146], any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(As amended Nov. 6, 1978, P. L. 95-598, Title II, § 249, 92 Stat. 2672.)

28 U.S.C. § 2202

Further relief

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

(June 25, 1948, c. 646, § 1, 62 Stat. 964.)